IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.Rev.Pet.No. 167 of 1998

CRA.265/1995 of ADDL.SESSIONS COURT, KOZHIKODE
ST.681/1995 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE
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REVN. PETITIONER:

P.M. RAVEENDRAN, S/O. MANOHARAN
17/1200 NEAR PETA CLUB,
PAVAMANI ROAD, KOZHIKODE - 1.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENTS:
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1. FOOD INSPECTOR, CALICUT CORPORATION
CALICUT.

2. STATE OF KERALA REPRESENTED BY THE
PUBIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.KPG.MENON
PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26/02/2007, THE COURT ON 25-5-2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 932/1998 IN CRL.R.P.NO. 167 OF 1998

DISMISSED.

25-5-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.167 of 1998

DATED THIS THE 25th DAY OF MAY 2007

ORDER

The revision petitioner is the first accused in S.T.No.681/1995 who stands convicted for the offence under Section 16(1)(a) of the P.F.A.Act and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/- and in default to undergo simple imprisonment for two months. The conviction and sentence stands confirmed vide order of the appellate court.

2. The prosecution case is that the Food Inspector, Calicut on 2-7-1991 at about 11.30 a.m. purchased 375 grams of gingelly oil from Raja oil Industries, East Kallai, Calicut and the same was found to have been adulterated. A2, the licensee/Proprietor of the establishment was found not guilty by the trial court as the required evidence as to the allegation that he is the licensee was not forthcoming. A1, the son of A2 from whom the Food Inspector allegedly purchased the sample is the appellant herein.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 4 and Exts.P1 to P12. The prosecution witnesses are the Food Inspector, Peon of the Food Inspector, the Health Officer of the Corporation, who is the local health authority and the Public Analyst respectively. As per Ext.P6 report of the Public Analyst, it was found that the acid value exceeded the standard prescribed for gingelly oil vide the standard 17.11 of the food Adulteration Rules.

4. I find that counsel for the revision petitioner has raised a number of contents, which he had raised before the appellate court as well. It is contended that the building number mentioned in the complaint and the mahazar varies; the evidence of PWs.1 and 2, the Food Inspector and the Peon of the Food Inspector respectively, is not consistent with respect to the purchase of the sample; the version of Pws.1 and 2 with respect to the availability of witnesses is contradictor;, there is no evidence as to whether the intermediary vessel was cleaned and dried, and that there is no evidence that the bulk quantity kept in the factory was meant for sale and that as to the date of receipt of the sample, the version of PW3, the Health officer and

Pws.1 and 2 are contradictory. The courts below had explained the above incongruities in support of the prosecution version.

5. I find that the quantity of gingelly oil found in the Mill amounted to 500 litres and that the same was in the manufacturing process and that the alleged purchase was not made from a shop is stressed by the counsel for the revision petitioner. I find that the appellate court has relied on the statement of PW1 that several persons had been at the place for the purchase of gingelly oil. I find that as contended by counsel for the petitioner, the mahazar does not contain any version that other persons were present in the premises for the purchase of gingely oil. The version of PW1 before the court in this regard can only be treated is an attempt to fill up the gap in the evidence of the prosecution. Further more, I find that PW1 has only stated that there were about 5 to 6 persons in the premises. There is no evidence that the above persons were the intending vendees. The decisions cited in **Govinda Rao v. Food Inspector, 2000(1)KLT 843** and **Food Inspector, Thodupuzha v. Cyriac, 1984 KLT 231** to the effect that storage simplicitor is not an offence under the Act unless there is

evidence that the article found in the factory was intended for sale is relevant in the context. It is also to be noted that closer scrutiny of the evidence is to be insisted in the absence of independent witnesses vide the Full Bench decision in **Food Inspector v. Prabhakaran, 1982 KLT 809 (F.B).** Absolutely no evidence has been produced to establish that the factory premises are being used as retail outlet. The quantity found stored even as per the version of PW.1, the Food Inspector is about 500 litres. There is no case that any adulterant was used. There is no evidence that the acid excess percentage is the result of use of any adulterant and not on account of not fully completing the purification process.

In the circumstances, I find that the accused/revision petitioner is entitled to benefit of doubt and is liable to be acquitted. The revision petition is allowed. The accused stands acquitted.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

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CRL.R.P.NO.167 OF 1998

ORDER

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24-5-2007

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